

## REMARKS

Reconsideration of the application and entry of the above amendments are respectfully requested.

Before entry of this amendment, claims 1-14, 16-24 and 46-53 were pending in this application. By this amendment, claims 1, 11 and 12 would be amended, claims 4-7, 13, 14, 16 and 47-53 would be cancelled. **Upon entry of this amendment, claims 1-3, 8-12, 17-24, and 46 would be pending in this application.** The requested claim amendments conform the claims to the allowable subject matter suggested by Examiner Goldberg in paragraph 12 of the Office action. Therefore, Applicants respectfully submit that entry of this amendment would place the claims in a condition for allowance and, therefore, is permissible.

No new matter is added by these amendments. Applicants reserve the right to pursue any or all of the claims and subject matter cancelled by this amendment in a separate application.

### First Final Office Action, dated November 18, 2002:

Applicants thank Examiner Goldberg for withdrawing the first final Office action, dated November 18, 2002. Applicants also thank the Examiner for clarifying by telephone call to Tanya Harding that the November 18, 2003 Office action is superseded by the current Office action (dated February 3, 2003). Hence, Applicants need not, and do not, respond to the superseded Office action.

A separate summary of the aforementioned telephone call (and related telephone interview with Examiner Goldberg) was filed with the PTO on February 18, 2003.

### Claim Numbering

In the prior response, the Examiner observed that then-newly added claims 25-32 were incorrectly numbered. The Examiner has renumbered such claims to be claims 46-53.

Applicants thank the Examiner for observing the error, and for properly numbering the claims. Herein, Applicants refer to the claims as they have been renumbered by the Examiner. That is, claims referred to as 25-32 in the prior response are now referred to as claims 46-53 throughout this amendment.

*Claim rejections under 35 U.S.C. §112, 1st paragraph:*

Claims 1-14, 16-22 and 47-52 have been rejected under 35 U.S.C. §112, 1st paragraph as allegedly containing new matter. Applicants traverse this rejection and reserve the right to argue in response to this rejection in a future continuation application. However, to facilitate prosecution of this application and obtain allowance of the subject matter the Examiner has indicated is allowable, Applicants have amended claim 1 to remove the allegedly new matter. Specifically, claim 1 has been amended to recite the language suggested by Examiner Goldberg at page 15, paragraph 12 of the Office action. Claims 2, 3, 8-12, and 17-22 each depend from amended claim 1 and do not recite the alleged new matter. Claims 4-7, 13, 14, 16 and 47-52 have been cancelled, which renders the rejection moot with respect to those claims.

Applicants request that the new matter rejection be withdrawn.

*Claim rejections under 35 U.S.C. §112, 2nd paragraph:*

Claims 1-22 and 47-53 have been rejected under 35 U.S.C. §112, 2nd paragraph because certain claim language recited therein is allegedly indefinite.

As discussed above, claim 1 has been amended to recite subject matter the Examiner has deemed to be allowable. Amended claim 1 no longer recites any of the allegedly indefinite terminology. Claims 2, 3, 8-12, and 17-22 depend from amended claim 1 and do not contain the rejected terminology. Claims 4-7, 13, 14, 16 and 47-53 have been cancelled for reasons unrelated to the §112, paragraph 2 rejections, and claim 15 was previously cancelled.

In view of these amendments and cancellation of claims, Applicants request that the

rejections of claims 1-22 and 47-53 on the basis of §112, paragraph 2 be withdrawn.

Claim rejections under 35 U.S.C. §103(a):

Claims 1-9, 13, 14, 18-24, 46 and 53 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Garbe *et al.*, *Infection and Immunity*, 62(8):3092-3101, 1994 (“Garbe”), in view of Hogan, U.S. Patent No. 5,595,874, issued January 1997 (“Hogan”). Applicants traverse this rejection.

*Claims 1-9, 13, 14, 18-22 and 53:* As discussed previously, claim 1 has been amended to recite subject matter that the Examiner has declared is allowable in light of all the cited references (see page 15, paragraph 12 of the Office action). Thus, the Examiner has concluded such subject matter overcomes Garbe in view of Hogan. Claims 2, 3, 8-12, and 17-22 depend from claim 1 and, therefore, are also free of these references. Claims 4-7, 13, 14, 16, and 53 have been cancelled herein.

*Claims 23, 24 and 46:* Claim 23 recites (among other things) a probe that hybridizes to specific nucleic acid sequences newly disclosed by Applicants that are present in a human biological specimen. Neither Garbe nor Hogan teach or suggest any of the nucleic acid sequences described by Applicants and enumerated in claim 23. Moreover, neither Garbe nor Hogan teach or suggest a specimen where such sequences are present, which is also enumerated in claim 23. Hence, this combination of references cannot serve as the basis of an obviousness rejection of claim 23 or its dependent claims 24 and 46.

In view of this argument, Applicants request that this rejection be withdrawn.

Claims 16 and 17 are rejected under 35 U.S.C. §103(a). Applicants traverse these rejections. However, claims 16 and 17 have been cancelled for reasons unrelated to the §103(a) rejections. Thus, the rejections are moot and Applicants request that they be withdrawn.

### CONCLUSION

Applicants thank Examiner Goldberg for helpful suggestions in the Office action. It is believed that the claims are now in condition for allowance but, if any minor issues need to be resolved before such a notice can be issued, the Examiner is requested to telephone the undersigned at the number shown below.

Respectfully submitted,

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